UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHKIE LEE,
on behalf of himself, FLSA Collective Plaintiffs and the Class,

Plaintiff,

v.

GRAND SICHUAN EASTERN (NY) INC.,
AMERICA HOIST INC.,
and ANTONG WANG,

Defendants.

--x

Case No: 12-CIV-8652

VERIFIED ANSWER WITH COUNTERCLAIMS

Defendants, GRAND SICHUAN EASTERN (NY) INC., AMERICA HOIST INC., and ANTONG WANG, by their attorneys, KEVIN KERVENG TUNG, P.C., answer the Plaintiff's complaint upon information and belief as follows:

INTRODUCTION

1. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the "Instruction" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying Fair Labor Standards Act, as amended, 29 U.S.C. §201 et seq. ("FSLA").

2. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "2"of the "Instruction" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying New York Labor Law.

JURISDICTION AND VENUE

3. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the "Jurisdiction And Venue" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statutes pursuant to 29 U.S.C. §216(b), 28 U.S.C. §1331, 1337, and 1343, as well as, pursuant to supplemental jurisdiction over state law claims pursuant to 28 U.S.C. §1367.

4. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of the "Jurisdiction And Venue of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute pursuant to venue being proper pursuant to 28 U.S.C. §1391.

PARTIES

5. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" of the complaint.

6. Defendants deny each and every allegation contained in paragraph "4" of the complaint, except that Defendant, AMERICA HOIST INC., admits that it is a domestic business corporation organized under the laws of the State of New York.

7. Defendants deny each and every allegation contained in paragraph "5" of the complaint, except that Defendant, GRAND SICHUAN EASTERN (NY) INC., admits that it is a domestic business corporation organized under the laws of the State of New York.

8. Defendants deny each and every allegation contained in paragraph "6" of the complaint, except that Defendant, ANTONG WANG, admits that he is the owner of Defendant, GRAND SICHUAN EASTERN (NY) INC. with its business place at 1049 2^{nd}

Ave, New York, New York, 10022.

9. Defendants deny each and every allegation contained in paragraph "7" of the complaint, except that Defendant, ANTONG WANG, admits that he is the Chairman or Chief Executive Officer of Defendant, GRAND SICHUAN EASTERN (NY) INC.

10. Defendants deny each and every allegation contained in paragraph "8" of the complaint.

11. Defendants deny each and every allegation contained in paragraph "9" of the complaint, except that Defendant, AMERICA HOIST INC. and GRAND SICHUAN EASTERN (NY) INC., admit that they continue to do business, and defer to this Court as to the precise and accurate interpretation of the underlying statute.

12. Defendants deny each and every allegation contained in paragraph "10" of the complaint.

FLSA COLLECTIVE ACTION ALLEGATIONS

13. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "11" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute.

14. Defendants deny each and every allegation contained in paragraph "12" of the complaint.

15. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "13" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute.

RULE 23 CLASS ALLEGATION – NEW YORK

16. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "14" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute.

17. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "15" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute.

18. Defendants deny each and every allegations contained in paragraph "16" of the complaint.

19. Defendants deny each and every allegations contained in paragraph "17" of the complaint.

20. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "18" of the complaint.

21. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "19" of the complaint.

22. Defendants deny each and every allegation contained in paragraph "20" of the complaint.

23. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "21" of the complaint.

STATEMENT OF FACTS

24. Defendants deny each and every allegation contained in paragraph "22" of the complaint, except that Defendant, AMERICA HOIST INC., admits that Plaintiff, JOHKIE LEE, worked as a waiter for Defendant AMERICA HOIST INC. located at 172 8th Avenue,

New York, New York, and that Plaintiff worked at such location from August 2011 to December 2011 and from February 2012 to April 2012.

25. Defendants deny each and every allegation contained in paragraph "23" of the complaint.

26. Defendants deny each and every allegation contained in paragraph "24" of the complaint, except that Defendant, AMERICA HOIST INC., admits that Defendant, AMERICA HOIST INC., paid Plaintiff a fixed monthly salary of $1,500 per month, paid by $700 in cash and $800 in check.

27. Defendants deny each and every allegation contained in paragraph "25" of the complaint.

28. Defendants deny each and every allegation contained in paragraph "26" of the complaint.

29. Defendants deny each and every allegation contained in paragraph "27" of the complaint.

30. Defendants deny each and every allegation contained in paragraph "28" of the complaint.

31. Defendants deny each and every allegation contained in paragraph "29" of the complaint.

32. Defendants deny each and every allegation contained in paragraph "30" of the complaint.

33. Defendants deny each and every allegation contained in paragraph "31" of the complaint, except that Defendant, AMERICA HOIST INC., admits that AMERICA HOIST

INC. paid Plaintiff more than the "tip credit" minimum wage pursuant to relevant laws and statutes. Defendants respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute.

34. Defendants deny each and every allegation contained in paragraph "32" of the complaint.

35. Defendants deny each and every allegation contained in paragraph "33" of the complaint.

36. Defendants deny each and every allegation contained in paragraph "34" of the complaint.

37. Defendants deny each and every allegation contained in paragraph "35" of the complaint.

38. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "36" of the complaint.

STATEMENT OF CLAIM
COUNT I
VIOLATION OF THE FAIR LABOR STANDARDS ACT

39. Defendants repeat the responses to each and every allegation contained in paragraph "37" of the complaint accordingly and consistently with the paragraphs above.

40. Defendants deny each and every allegation contained in paragraph "38" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute.

41. Defendants deny each and every allegation contained in paragraph "39" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of

the underlying statute.

42. Defendants deny each and every allegation contained in paragraph "40" of the complaint, except that Defendant, GRAND SICHUAN EASTERN (NY) INC., admits to have had gross revenues in excess of $500,000.00 in the past, and that Defendant, AMERICA HOIST INC., admits to have had gross revenues in excess of $500,000.00 in the past.

43. Defendants deny each and every allegation contained in paragraph "41" of the complaint.

44. Defendants deny each and every allegation contained in paragraph "42" of the complaint and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute.

45. Defendants deny each and every allegation contained in paragraph "43" of the complaint and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute.

46. Defendants deny each and every allegation contained in paragraph "44" of the complaint.

47. Defendants deny each and every allegation contained in paragraph "45" of the complaint and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute.

48. Defendants deny each and every allegation contained in paragraph "46" of the complaint and deny knowledge and information sufficient to form a belief as to the truth of the allegations pertaining to the intentions of the Plaintiff contained in paragraph "46" of the complaint.

49. Defendants deny each and every allegation contained in paragraph "47" of the complaint.

50. Defendants deny each and every allegation contained in paragraph "48" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute.

51. Defendants deny each and every allegation contained in paragraph "49" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statute.

52. Defendants deny each and every allegation contained in paragraph "50" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statutes.

53. Defendants deny each and every allegation contained in paragraph "51" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statutes.

COUNT II
VIOLATION OF THE NEW YORK LABOR LAW

54. Defendants repeat the responses to each and every allegation contained in paragraph "52" of the complaint accordingly and consistently with the paragraphs above.

55. Defendants deny each and every allegation contained in paragraph "53" of the complaint, except that the Defendant, AMERICA HOIST INC., admits that the Plaintiff JOHKIE LEE, worked as a waiter for Defendant AMERICA HOIST INC. Defendants respectfully defer to the Court as to the precise and accurate interpretation of the underlying statutes.

56. Defendants deny each and every allegation contained in paragraph "54" of the complaint.

57. Defendants deny each and every allegation contained in paragraph "55" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statutes.

58. Defendants deny each and every allegation contained in paragraph "56" of the complaint.

59. Defendants deny each and every allegation contained in paragraph "57" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statutes.

60. Defendants deny each and every allegation contained in paragraph "58" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statutes.

61. Defendants deny each and every allegation contained in paragraph "59" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statutes.

62. Defendants deny each and every allegation contained in paragraph "60" of the complaint, and respectfully defer to the Court as to the precise and accurate interpretation of the underlying statutes.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE
DEFENDANTS GRAND SICHUAN EASTERN (NY) INC., AMERICA HOIST INC.,
AND ANTONG WANG, ALLEGE

63. Plaintiff failed to state a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
DEFENDANTS GRAND SICHUAN EASTERN (NY) INC., AMERICA HOIST INC.,
AND ANTONG WANG, ALLEGE

64. Court lacks personal jurisdiction over the answering Defendants because the summons and complaint was not served upon the answering Defendants or because the service of process was insufficient.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE
DEFENDANT GRAND SICHUAN EASTERN (NY) INC. ALLEGES

65. Defendant GRAND SICHUAN EASTERN (NY) INC. is improperly named as Defendant because no employment relationship has ever existed between the Plaintiff and the Defendant, GRAND SICHUAN EASTERN (NY) INC.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
DEFENDANTS GRAND SICHUAN EASTERN (NY) INC.
AND ANTONG WANG, ALLEGE

66. Defendant GRAND SICHUAN EASTERN (NY) INC. as well as its chairman, ANTONG WANG, are improperly named as Defendants because Defendant GRAND SICHUAN EASTERN (NY) INC. is a different corporate entity with no relationship with and independent from Defendant AMERICA HOIST INC., which was the employer of Plaintiff.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
DEFENDANT ANTONG WANG, ALLEGES

67. Defendant ANTONG WANG is improperly named as Defendant in his individual capacities herein because any and all activities alleged in Plaintiff's Complaint pertains only to his official capacities, if any, in relations to Defendant, GRAND SICHUAN EASTERN (NY) INC., and as such should not be held personally liable.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

DEFENDANT AMERICA HOIST INC. ALLEGES

68. Defendant, AMERICA HOIST INC., did not fail to pay ANY required hourly wage, overtime, or spread of hours, to the Plaintiff.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE DEFENDANTS GRAND SICHUAN EASTERN (NY) INC., AMERICA HOIST INC., AND ANTONG WANG, ALLEGE

69. Defendants reserve the right to assert additional affirmative defenses as such additional defenses become known through investigation, discovery, or otherwise.

AS AND FOR A FIRST COUNTERCLAIM, DEFENDANTS GRAND SICHUAN EASTERN (NY) INC. AND ANTONG WANG ALLEGE

70. Defendants, GRAND SICHUAN EASTERN (NY) INC. and ANTONG WANG, repeat and make a part hereof all of the allegations of paragraph 1-69 as though recited at length herein.

71. Plaintiff's complaint against Defendants GRAND SICHUAN EASTERN (NY) INC. and ANTONG WANG is frivolous.

72. Plaintiff is aware or should have been aware that there has never existed any employment relationship between the Plaintiff and the Defendant, GRAND SICHUAN EASTERN (NY) INC.

73. Plaintiff is aware or should have been aware that Defendant GRAND SICHUAN EASTERN (NY) INC. is a different corporate entity with no relationship with and independent from Defendant AMERICA HOIST INC., which was the employer of Plaintiff.

74. Plaintiff is aware or should have been aware that any and all activities alleged in Plaintiff's Complaint pertains only to Defendant ANTONG WANG's official capacities, if

any, in relations to Defendant, GRAND SICHUAN EASTERN (NY) INC., and as such should not be held personally liable.

75. Plaintiff's complaint lacks reasonable basis.

76. A good faith investigation would reveal that the Plaintiff's claim lacks a reasonable basis.

77. Plaintiff filed the complaint notwithstanding that a good faith investigation would have revealed that his claim lacks a reasonable basis.

78. Thus, Plaintiff's complaint against Defendants GRAND SICHUAN EASTERN (NY) INC. and ANTONG WANG is completely frivolous.

79. Therefore, Defendants, SICHUAN EASTERN (NY) INC. and ANTONG WANG, are entitled to an award of reasonable attorney fees, costs and disbursements of Plaintiff's frivolous claims.

AS AND FOR A SECOND COUNTERCLAIM,
DEFENDANT ANTONG WANG ALLEGES

80. Defendant, ANTONG WANG, repeats and makes a part hereof all of the allegations of paragraph 1-79 as though recited at length herein.

81. Plaintiff's commencing of the frivolous action is extreme and outrageous.

82. Consequently, Defendant ANTONG WANG has suffered fear, insult, indignity, agitation and severe emotional distress, damaging the defendant in the amount of $50,000.

83. Therefore, Defendant ANTONG WANG is entitled to an award in the sum of $50,000 as the damages Defendant suffered from Plaintiff's frivolous action.

AS AND FOR A THRID COUNTERCLAIM,
DEFENDANT AMERICA HOIST INC. ALLEGES

84. Defendant, AMERICA HOIST INC., repeats and makes a part hereof all of the allegations of paragraph 1-69 as though recited at length herein.

85. Plaintiff's complaint against Defendant, AMERICA HOIST INC., is frivolous.

86. Plaintiff is aware or should have been aware that Defendant, AMERICA HOIST INC., paid wages to Plaintiff in accordance with relevant laws and statutes.

87. Plaintiff's complaint Defendant, AMERICA HOIST INC., lacks reasonable basis.

88. A good faith investigation would reveal that the Plaintiff's claim lacks a reasonable basis.

89. Plaintiff filed the complaint notwithstanding that a good faith investigation would have reveal that his claim lacks a reasonable basis.

90. Thus, Plaintiff's complaint is completely frivolous.

91. Therefore, Defendant, AMERICA HOIST INC., is entitled to an award of reasonable attorney fees, costs and disbursements of Plaintiff's frivolous claims.

AS AND FOR A FOURTH COUNTERCLAIM,
DEFENDANT AMERICA HOIST INC. ALLEGES

92. Defendant, AMERICA HOIST INC., repeats and makes a part hereof all of the allegations of paragraph 1-69 as though recited at length herein.

93. At the night of October 31, 2011, Plaintiff JOHKIE LEE was working as a waiter in Defendant AMERICA HOIST INC's restaurant located at 172 8th Avenue, New York, New York, 10011.

94. After Plaintiff JOHKIE LEE received the restaurant copy of the Credit Card receipt from a customer Yiming Pan with Yiming Pan's signature on the receipt, and before

he handed it to the cashier of the restaurant, Plaintiff JOHKIE LEE, for the purpose of earning more tips, intentionally and willfully tempered with the amounts on the restaurant copy of the receipt by illegally changing the "TIP" amount from $4.30 to $8.30 and illegally changing the "TOTAL" amount from $46.60 to $50.60.

95. Defendant AMERICA HOIST INC. was not aware of Plaintiff JOHKIE LEE's aforesaid conduct at that time.

96. Several days later, after receiving and reviewing the bills from bank, the customer Yiming Pan found out aforesaid modification on the restaurant copy of his Credit Card receipt and came to Defendant AMERICA HOIST INC., complaining about such modification.

97. To avoid an action of conversion and/or theft against Plaintiff JOHKIE LEE as the employee and Defendant AMERICA HOIST INC. as the employer arising from aforesaid unlawful conduct of Plaintiff JOHKIE LEE, Defendant AMERICA HOIST INC. negotiated and settled with the customer Yiming Pan by paying Yiming Pan $300.

98. Defendant AMERICA HOIST INC. paid Yiming Pan $300 to settle aforesaid dispute.

99. Defendant AMERICA HOIST INC. suffered damages of $300 it paid to Yiming Pan in order to settle aforesaid dispute with Yiming Pan arising from Plaintiff JOHKIE LEE's unlawful conduct

100. Defendant AMERICA HOIST INC. suffered serious damages as to it's business reputation in the amount of $50,000 due to Plaintiff JOHKIE LEE's willful and unlawful conduct.

101. Therefore, Defendant AMERICA HOIST INC. shall be entitled to

a) reimbursement and compensation from Plaintiff JOHKIE LEE for $300, and

b) $50,000 for damages to Defendant AMERICA HOIST INC.'s business reputation.

JURY DEMAND

102. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, defendants demand trial by jury on all issues so triable as of right.

WHEREFORE, the Defendants demand judgment dismissing the Plaintiff's complaint in its entirety; awarding the defendants with reasonable attorney fees, costs, fees, and disbursements; and damages in amount of $50,300, and any other relief as the court deems just and proper.

Dated: Queens, New York
January 10, 2013

Respectfully submitted,
KEVIN KERVENG TUNG, P.C.

Kevin K. Tung, Esq. (KT-1478)
Attorneys for the Defendants
136-20 38th Avenue, Suite 3D
Flushing, New York 11354
Tel: 718-939-4633
Fax: 718-939-4468

To: Anne Seelig, Esq.
LEE LITIGATION GROUP, PLLC
30 East 39th Street, Second Floor
New York, New York 10016

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

WEN YAN GAO, being duly sworn, deposes and says:

I am the officer and designated representative of Defendant AMERICA HOIST INC. in the this action. I have read the foregoing Verified Answer and know the contents thereof; the same is true to my own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

Wen Yan Gao
WEN YAN GAO

Sworn to before me on this
10 day of January, 2013

SHI SHENGMING
Notary Public, State of New York
No. 02SH6256923
Qualified In New York County
Commission Expires March 5, 2016

Notary Public

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

ANTONG WANG, being duly sworn, deposes and says:

I am the officer and owner of Defendant GRAND SICHUAN EASTERN (NY) INC. in the this action. I have read the foregoing Verified Answer and know the contents thereof; the same is true to my own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

ANTONG WANG

Sworn to before me on this
10 day of January, 2013

SHI SHENGMING
Notary Public, State of New York
No. 02SH6256923
Qualified In New York County
Commission Expires March 5, 2013

Notary Public

CERTIFICATION OF SERVICE

The undersigned hereby certifies that the counsels of record was served with a copy of the foregoing Verified Answer with Counterclaims through the Court's CM/ECF System on January 11, 2013. In addition, on January 11, 2013, I personally mailed a hard copy of the forgoing Verified Answer with Counterclaims to the following person at the last known address set forth after the name below:

Anne Seelig, Esq.
LEE LITIGATION GROUP, PLLC
30 East 39th Street, Second Floor
New York, New York 10016

Dated: Queens, New York
January 11, 2013

KEVIN KERVENG TUNG, P.C.
Attorneys for Defendants

Kevin K. Tung, Esq. [KT-1478]
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Fax: 718-939-4468

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHKIE LEE,
on behalf of himself, FLSA Collective Plaintiffs and the Class,

Plaintiff,

-against-

GRAND SICHUAN EASTERN (NY) INC.,
AMERICA HOIST INC., and ANTONG WANG,

Defendants.

VERIFIED ANWER WITH COUNTERCLAIMS

KEVIN KERVENG TUNG, P.C.
Attorneys for Defendants
136-20 38th Avenue, Suite 3D
Flushing, New York 11354
(718) 939-4633

By: ______________________
Kevin K. Tung, Esq.